



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0957; FRL-10543-01-R9]

Partial Approval, Conditional Approval, and Partial Disapproval of Air Quality State Implementation Plans; Nevada; Infrastructure Requirements for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve in part, conditionally approve in part, and disapprove in part a state implementation plan (SIP) revision submitted by the State of Nevada pursuant to the requirements of the Clean Air Act (CAA or “Act”) for the implementation, maintenance, and enforcement of the 2015 national ambient air quality standards (NAAQS) for ozone. As part of this action, we are proposing to reclassify a region of the State for emergency episode planning purposes with respect to ozone. Finally, we are proposing to approve a regulatory revision into the Nevada SIP. We are taking comments on this proposal and, after considering any comments submitted, plan to take final action.

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0957 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

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SUPPLEMENTARY INFORMATION: Throughout this document, the terms “we,” “us,” and “our” refer to EPA.

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I. The EPA’s Approach to the Review of Infrastructure SIP Submissions

The EPA is proposing action on a SIP submittal from Nevada that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone

NAAQS. The requirement for states to submit a SIP revision of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submittals “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” and these SIP submittals are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submittals, and the requirement to make the submittals is not conditioned upon the EPA’s taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submittal must address.

The EPA has historically referred to these SIP submittals made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submittals. Although the term “infrastructure SIP” does not appear in the CAA, the EPA uses the term to distinguish this particular type of SIP submittal from submittals that are intended to satisfy other SIP requirements under the CAA, such as “nonattainment SIP” or “attainment SIP” submittals to address the nonattainment planning requirements of part D of title I of the CAA, “regional haze SIP” submittals required to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NSR) permit program submittals to address the permit requirements of CAA, title I, part D.

Historically, the EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in other cases conveying interpretations that have already been developed and applied to individual SIP submittals for particular elements.¹ The EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (“2013 Infrastructure SIP Guidance”).² The EPA

¹ We note, however, that nothing in the CAA requires the EPA to provide guidance or to promulgate regulations for infrastructure SIP submittals. The CAA directly applies to states and requires the submittal of infrastructure SIP submittals, regardless of whether or not the EPA provides guidance or regulations pertaining to such submittals. The EPA elects to issue such guidance in order to assist states, as appropriate.

² “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” Memorandum from Stephen D. Page, September 13, 2013.

developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, the EPA describes the duty of states to make infrastructure SIP submittals to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. The EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submittals.³ The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, the EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submittals need to address certain issues and need not address others. Accordingly, the EPA reviews each infrastructure SIP submittal for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submittals. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, the EPA reviews infrastructure SIP submittals to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Infrastructure SIP Guidance explains the EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (e.g., whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in the EPA's evaluation of

³ The EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submittals to address section 110(a)(2)(D)(i)(I). The EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, the EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether the EPA elects to provide guidance on a particular section has no affect on a state's CAA obligations.

infrastructure SIP submittals because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, the EPA's review of infrastructure SIP submittals with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C, title I of the Act and the EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and regulated NSR pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 Code of Federal Regulations (CFR) 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 NAAQS for particulate matter of 2.5 micrometers or less (PM_{2.5}). Accordingly, the latter optional provisions are types of provisions the EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, the EPA's review of a state's infrastructure SIP submittal focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia*, the requirement that states have a program to regulate minor new sources. Thus, the EPA evaluates whether the state has a SIP-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submittal, however, the EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (i.e., already in the existing SIP) for compliance with the requirements of the CAA and the EPA's regulations that pertain to such programs.

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submittal is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they

purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA and existing provisions for PSD programs that may be inconsistent with current requirements of the EPA's "Final NSR Improvement Rule," 67 FR 80186, December 31, 2002, as amended by 72 FR 32526, June 13, 2007 ("NSR Reform"). Thus, the EPA believes it may approve an infrastructure SIP submittal without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submittal even if it is aware of such existing provisions.⁴ It is important to note that the EPA's approval of a state's infrastructure SIP submittal should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

The EPA's approach to the review of infrastructure SIP submittals is to identify the CAA requirements that are logically applicable to that submittal. The EPA believes that this approach to the review of a particular infrastructure SIP submittal is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and the EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when the EPA evaluates adequacy of the infrastructure SIP submittal. The EPA believes that a better approach is for states and the EPA to focus attention on those elements of

⁴ By contrast, the EPA notes that if a state were to include a new provision in an infrastructure SIP submittal that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then the EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, the EPA's 2013 Infrastructure SIP Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submittal for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, the EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes the EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.⁵ Section 110(k)(6) authorizes the EPA to correct errors in past actions, such as past approvals of SIP submittals.⁶ Significantly, the EPA's determination that an action on a state's infrastructure SIP submittal is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude the EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all

⁵ For example, the EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 76 FR 21639, April 18, 2011.

⁶ The EPA has used this authority to correct errors in past actions on SIP submittals related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536, December 30, 2010. The EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664, July 25, 1996 and 62 FR 34641, June 27, 1997 (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to California SIP); and 74 FR 57051, November 3, 2009 (corrections to Arizona and Nevada SIPs).

existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submittal, the EPA believes that section 110(a)(2)(A) may be among the statutory bases that the EPA relies upon in the course of addressing such deficiency in a subsequent action.⁷

II. Background

A. Statutory Framework

Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must include. The infrastructure SIP elements required by section 110(a)(2) are as follows:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i): Interstate pollution transport.
- Section 110(a)(2)(D)(ii): Interstate pollution abatement and international air pollution.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local government and regional agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J): Consultation with government officials, public notification, PSD, and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submittal of modeling data.
- Section 110(a)(2)(L): Permitting fees.

⁷ See, e.g., the EPA's disapproval of a SIP submittal from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344, July 21, 2010 (proposed disapproval of director's discretion provisions); 76 FR 4540, January 26, 2011 (final disapproval of such provisions).

- Section 110(a)(2)(M): Consultation and participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are: Section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment NSR), and Section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address requirements for the nonattainment NSR portion of section 110(a)(2)(C) or the whole of section 110(a)(2)(I).

B. Regulatory History

On October 26, 2015, the EPA promulgated a revised NAAQS for ozone, (“the 2015 ozone NAAQS”), triggering a requirement for states to submit infrastructure SIPs within three years of promulgation of the revised NAAQS. The 2015 ozone NAAQS revised the 2008 8-hour ozone NAAQS by lowering the primary and secondary 8-hour ozone standards from 75 parts per billion (ppb) to 70 ppb.⁸

III. State Submittal

A. Infrastructure SIP Submittal

The Nevada Division of Environmental Protection (NDEP) submitted a SIP revision addressing the infrastructure SIP requirements for the 2015 ozone NAAQS on September 28, 2018 (“Nevada’s Infrastructure SIP Submittal”).⁹ It included separate sections for Clark County¹⁰ and Washoe County.¹¹ We refer to each individual section as that agency’s or County’s portion of the submittal. In accordance with CAA section 110(k)(1)(B), the infrastructure SIP became complete by operation of law on March 28, 2019.

⁸ 80 FR 65292 (October 26, 2015).

⁹ Although NDEP submitted Nevada’s Infrastructure SIP Submittal electronically on September 28, 2018, the submittal letter is dated October 1, 2018, from Greg Lovato, Administrator, Nevada Division of Environmental Protection, to Mike Stoker, Regional Administrator, U.S. EPA Region IX, RE: “The Nevada State Implementation Plan for the 2015 Primary and Secondary Ozone NAAQS.”

¹⁰ Letter dated September 12, 2018, from Marci Henson, Director, Clark County Department of Air Quality, to Greg Lovato, Administrator, Nevada Division of Environmental Protection, RE: “Clark County Portion of the Nevada Infrastructure State Implementation Plan for the 2015 Ozone NAAQS.”

¹¹ Letter dated August 28, 2018, from Charlene Albee, Director, Washoe County Health District Air Quality Management Division, to Greg Lovato, Administrator, Nevada Division of Environmental Protection, Subject: “2015 Ozone National Ambient Air Quality Standard Infrastructure State Implementation Plan (SIP).”

As noted in each respective portion of the submittal, NDEP, Clark County, and Washoe County all provided public notice and an opportunity for public comment prior to finalizing each portion of the infrastructure SIP submittal. Additionally, each agency either held or offered to hold a public hearing as part of the public notice and comment period. Notice, hearing, and adoption dates for each portion of the submittal are shown in Table 1. We find that these submittals meet the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102.

Table 1 – Notification and Opportunities for Public Comment on the Nevada SIP				
Agency	Submittal	Start of Public Notice	Hearing Date	Adoption Date
NDEP	The Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2015 Ozone NAAQS: Demonstration of Adequacy	July 19, 2018	None ^a	August 29, 2018
Clark County Board of Commissioners	The Clark County Portion of the State Implementation Plan to Meet the Ozone Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2)	July 2, 2018	August 21, 2018	August 21, 2018
Washoe County District Board of Health	The Washoe County Portion of the Nevada State Implementation Plan to Meet the Ozone Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2)	June 20, 2018	July 26, 2018	July 26, 2018

^a The hearing was tentatively scheduled for August 29, 2018, but cancelled because no one requested a hearing.

B. Revised Rule

In Nevada’s Infrastructure SIP Submittal, NDEP included a revised version of Nevada Administrative Code (NAC) 445B.22097 for incorporation into the Nevada SIP.¹² For the revised rule, NDEP included documentation of the public comment period; the public hearing on February 21, 2018; and proof of adoption by the State Environmental Commission.

1. What Rule did the State Submit

¹² See Enclosure NDEP 2015 Ozone NAAQS Infrastructure SIP, October 1, 2018, Nevada Division of Environmental Protection Proof of Adoption of the 2015 Ozone Standard into the Nevada Administrative Code (NAC) for Approval into the Applicable Nevada SIP.

NDEP adopted an amendment to NAC 445B.22097, “Standards of quality for ambient air” on February 21, 2018 and submitted it to the EPA on September 28, 2018. On October 20, 2022, the EPA proposed approval into the SIP of a version of the rule adopted on October 27, 2015.¹³ A revision to NAC 445B.22097 was last approved into the SIP on March 27, 2006.¹⁴

2. What is the Purpose of the Submitted Rule Revision

The regulation was amended “to align [Nevada’s regulations] with the national ambient air quality standards (NAAQS) currently in effect.”¹⁵ The change to NAC 445B.22097 submitted with Nevada’s Infrastructure SIP Submittal would lower the State’s 8-hour ozone standard from 0.075 to 0.070 parts per million (ppm), consistent with the 2015 Ozone NAAQS.

C. Commitment Letters

In addition to the submittals identified in Table 1, NDEP and Washoe County submitted letters committing to develop, adopt, and submit rules meeting the public notice requirements of CAA section 127, which are cross-referenced in CAA section 110(a)(2)(J), within one year of our final action conditionally approving both agencies for the requirement.¹⁶ CAA section 127 requires that each state’s EPA-approved SIP contain measures to notify the public of instances where any NAAQS is exceeded, advise the public of health hazards related to any exceedance, and provide information on ways to prevent such standards from being exceeded in the future. While NDEP and Washoe County provide notifications to the public in the event of a NAAQS exceedance, neither agency’s EPA-approved SIP contains measures requiring such notifications.

¹³ 87 FR 63744 (October 20, 2022).

¹⁴ 71 FR 15040 (March 27, 2006).

¹⁵ Department of Conservation and Natural Resources, which includes the Nevada Division of Environmental Protection, State Environmental Commission, Notice of Regulatory Hearing Adoption of Regulations and Other Matters Before the State Environmental Commission Public Notice, SEC Public Hearing February 21, 2018.

¹⁶ Letter dated September 9, 2022, from Greg Lovato, Administrator Nevada Division of Environmental Protection, to Martha Guzman, Regional Administrator, U.S. EPA Region IX, Re: “Request for Conditional Approval of Nevada’s Infrastructure State Implementation Plan for the 2012 PM_{2.5} and 2015 Ozone National Ambient Air Quality Standards.” and Letter dated September 2, 2022, from Greg Lovato, Administrator Nevada Division of Environmental Protection to Martha Guzman, Regional Admin, Re: Nevada’s Infrastructure State Implementation Plan for the 2012 PM_{2.5} National Ambient Air Quality Standard dated September 9, 2022 that enclosed the letter from Francisco Vega, Director, Air Quality Management Division, Washoe County Health Division to Greg Lovato, Administrator, Nevada Division of Environmental Protection and Martha Guzman, EPA, Re: “Request for Conditional Approval of Nevada’s Infrastructure State Implementation Plan for the 2012 PM_{2.5} and 2015 Ozone National Ambient Air Quality Standards.”

CAA section 110(k)(4) authorizes the EPA to conditionally approve a plan revision based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval.

IV. The EPA's Evaluation and Proposed Action

A. Proposed Approvals and Partial Approvals

1. Infrastructure SIP

We have evaluated Nevada's Infrastructure SIP Submittal and the existing provisions of the Nevada SIP for compliance with the infrastructure SIP requirements (or "elements") of CAA section 110(a)(2) and applicable regulations in 40 CFR part 51 ("Requirements for Preparation, Adoption, and Submittal of State Implementation Plans"). The Technical Support Document (TSD), available in the docket to this proposed rulemaking, includes our evaluation of all of the elements and rationale for our proposed action, as well as our evaluation of various statutory and regulatory provisions. For some requirements, we refer to prior notices and TSDs for Nevada Infrastructure SIP submissions, which are included in the docket for this rulemaking.

Based on the analysis in this document and discussed in detail in our TSD, we propose to approve Nevada's Infrastructure SIP Submittal with respect to the following Clean Air Act requirements:¹⁷

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C) (in part): Program for enforcement of control measures (full approval), and regulation of new stationary sources (approval for Clark County only) and minor sources (full approval).
- 110(a)(2)(D) (in part, see below): Interstate Pollution Transport.
 - 110(a)(2)(D)(i)(II) (in part) - interference with PSD (prong 3) (approval for Clark County only).

¹⁷ All approvals are full approvals for NDEP, Clark County, and Washoe County except where noted otherwise.

- 110(a)(2)(D)(ii) (in part) - interstate pollution abatement (approval for Clark County only) and international air pollution.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency episodes.
- 110(a)(2)(H): SIP revisions.
- 110(a)(2)(J) (in part): Consultation with government officials, public notification (conditional approval for NDEP and Washoe County, full approval for Clark County), and PSD and visibility protection (full approval for Clark County only).
- 110(a)(2)(K): Air quality modeling and submission of modeling data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

2. Proposed Approval of State Provisions into the Nevada SIP

As part of our proposed approval of Nevada's Infrastructure SIP Submittal, we are also proposing to approve a state regulation into the Nevada SIP. Specifically, we propose to approve into the SIP a new version of NAC 445B.22097, which revises the 8-hour ozone standard in the Nevada standards table from 0.075 to 0.070 parts per million (ppm) to be consistent with the 2015 ozone NAAQS and deletes the "National Standards" and "Method" columns because both are for reference only and are often out-of-date compared to the referenced federal regulations.

As a general matter, rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). We have evaluated NDEP's revised rule for compliance with CAA requirements for SIPs, set forth in CAA section 110(a)(2), and for compliance with CAA

requirements for SIP revisions in CAA sections 110(l) and 193. In general, the rule strengthens the SIP, as discussed in section III.B.2. of this document. Based upon our analysis, we propose to find NAC 445B.22097 meets the requirements of CAA sections 110(a)(2), 110(l), and 193. Therefore, the EPA is proposing to approve the submitted revision to NAC 445B.22097 into the Nevada SIP.

B. Conditional Approvals

1. Conditional Approvals

CAA section 110(k)(4) authorizes the EPA to conditionally approve a plan revision based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval. In letters dated September 2, 2022 and September 9, 2022, NDEP and Washoe County committed to adopt and submit specific enforceable measures to address the identified deficiencies under CAA section 110(a)(2)(J) discussed in Sections III.C. and IV.A. of this proposed rulemaking and in our TSD.¹⁸ Accordingly, pursuant to section 110(k)(4) of the Act, the EPA is proposing a conditional approval of the NDEP and Washoe County portions of Nevada's Infrastructure SIP Submittal addressing the public notification requirements of CAA section 110(a)(2)(J) for the 2015 Ozone NAAQS.

If NDEP and Washoe County meet their commitments to submit the required revisions within 12 months of the EPA's final action on this SIP submittal, and the EPA approves the submission, then the deficiencies listed above will be cured. However, if NDEP and/or Washoe County fail to submit these revisions within the required timeframe, the conditional approvals shall become disapprovals.

C. Proposed Partial Disapprovals

¹⁸ Clark County has satisfied this requirement through Air Quality Regulation 4.5, approved into the SIP in a rule published on April 21, 2022 (87 FR 23765).

The EPA proposes to disapprove Nevada's Infrastructure SIP Submittal with respect to the following infrastructure SIP requirements:

- 110(a)(2)(C) (in part): Regulation of new and modified stationary sources (disapproval for NDEP and Washoe County).
- 110(a)(2)(D)(i)(II) (in part): interference with PSD (prong 3) (disapproval for NDEP and Washoe County).
- 110(a)(2)(D)(ii) (in part): interstate pollution abatement (disapproval for NDEP and Washoe County).
- 110(a)(2)(J) (in part): PSD (disapproval for NDEP and Washoe County).

As explained more fully in our TSD, we are proposing to disapprove the NDEP and Washoe County portions of Nevada's Infrastructure SIP Submittal with respect to the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J). The Nevada SIP does not fully satisfy the statutory and regulatory requirements for PSD permit programs under part C, title I of the Act, because NDEP and Washoe County do not currently have SIP-approved PSD programs. Although the NDEP and Washoe County portions of the SIP remain deficient with respect to PSD requirements, there would be no further consequences if the action is finalized as proposed, as both agencies already implement the federal PSD program at 40 CFR 52.21 for all regulated NSR pollutants, pursuant to delegation agreements with the EPA.¹⁹

D. Prior Action and Deferred Action

The EPA is addressing the following Clean Air Act Requirements in separate rulemakings:²⁰

¹⁹ See 40 CFR 52.1485. The EPA fully delegated the implementation of the federal PSD programs to NDEP on October 19, 2004 ("Agreement for Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United States Environmental Protection Agency, Region 9 to the Nevada Division of Environmental Protection"), as updated on September 15, 2011 and November 7, 2012, and to Washoe County on March 13, 2008 ("Agreement for Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United States Environmental Protection Agency, Region 9 to the Washoe County District Health Department").

²⁰ 87 FR 20036 (April 6, 2022), 87 FR 29108 (May 12, 2022), 87 FR 31485 (May 24, 2022).

- 110(a)(2)(D) (in part, see below): Interstate Pollution Transport.
 - 110(a)(2)(D)(i)(I) - significant contribution to a nonattainment area (prong 1).
 - 110(a)(2)(D)(i)(I) - significant contribution to a maintenance area (prong 2).

Additionally, on August 12, 2022, NDEP withdrew its submittal of the Prong 4 element in Nevada’s Infrastructure SIP Submittal and submitted a revised Prong 4 element with the State’s Regional Haze Plan for the 2nd Planning Period.²¹ The EPA intends to act on the revised Prong 4 element when we act on Nevada’s Regional Haze Plan for the 2nd Planning Period and is therefore not acting on the requirement as part of this action.

E. Proposed Reclassification for Emergency Episode Planning

The priority thresholds for classification of air quality control regions are listed in 40 CFR 51.150, and the specific classifications of air quality control regions in Nevada are listed at 40 CFR 52.1471. Consistent with the provisions of 40 CFR 51.153, reclassification of an air quality control region must rely on the most recent three years of air quality data. Under 40 CFR 51.151 and 51.152, regions classified Priority I are required to have SIP-approved emergency episode contingency plans, while those classified Priority III are not required to have such plans.²² We interpret 40 CFR 51.153 as establishing the means for states to review air quality data and request a higher or lower classification for any given region and as providing the regulatory basis for the EPA to reclassify such regions, as appropriate, under the authorities of CAA sections 110(a)(2)(G) and 301(a)(1).

The priority classification threshold for ozone under 40 CFR 51.150 is 195 micrograms per cubic meter, equivalent to 0.10 parts per million (ppm), calculated as a one-hour maximum. Regions with one-hour ozone concentrations greater than 0.10 ppm are classified as Priority I for ozone under 40 CFR 51.150. All other regions are classified as Priority III for ozone. Nevada’s

²¹ See letter dated August 12, 2022, from Greg Lovato, Administrator, Nevada Department of Environmental Protection, to Martha Guzman, Regional Administrator, EPA Region 9, re: “The Nevada State Implementation Plan for the Regional Haze Rule for the Second Planning Period; Withdrawal and Replacement of Elements of the 2012 PM_{2.5} NAAQS and 2015 Ozone NAAQS Infrastructure SIPs.”

²² 40 CFR 51.151 and 51.152.

regional priority classifications for ozone under 40 CFR 51.150 are located at 40 CFR 52.1471. Currently, the Las Vegas Intrastate air quality control region (AQCR) is classified as Priority I for ozone. The Northwest Nevada Intrastate AQCR and Nevada Intrastate AQCR are currently classified as Priority III for ozone.

Air quality data from 2019-2021 indicate that the maximum one-hour ozone concentrations monitored in two Nevada regions exceed the Priority I threshold for one-hour ozone. The maximum one-hour ozone concentration measured in the Las Vegas Intrastate AQCR in this period was 0.104 ppm; the maximum one-hour ozone concentration measured in the Northwest Nevada Intrastate AQCR in this period was 0.106 ppm. We are proposing to reclassify the Northwest Nevada Intrastate AQCR from Priority III to Priority I for ozone and to retain the classification of the Las Vegas Intrastate AQCR as Priority I.

Air quality data from 2019-2021 also indicate that the maximum one-hour ozone concentration monitored in the Nevada Intrastate AQCR does not exceed the Priority I threshold for one-hour ozone. The maximum one-hour ozone concentration monitored in this region from 2019-2021 was 0.099 ppm. We are therefore not reclassifying the Nevada Intrastate AQCR priority classification and it remains as Priority III for ozone.

If finalized as proposed, the reclassification of the Northwest Nevada Intrastate AQCR from Priority III to Priority I for ozone will not generate new requirements for Nevada to submit an emergency episode contingency plan because NDEP and Washoe County – the two agencies with jurisdiction over the AQCR – already have SIP-approved emergency episode plans. Thus, our proposed reclassification of the Northwest Nevada Intrastate AQCR for ozone also does not affect our proposed approval of the Nevada SIP with respect to CAA section 110(a)(2)(G) for the 2015 ozone NAAQS.

F. Request for Public Comments

The EPA is soliciting public comments on this proposed rulemaking. We will accept comments from the public for the next 30 days. We will consider any comments received before taking final action.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the NDEP rule described in section III.B.1. The EPA has made, and will continue to make, these documents generally available electronically in the docket for this rulemaking at <https://www.regulations.gov>.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does

not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise

impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

The state did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

List of Subjects in 40 CFR Part 52

Approval and promulgation of implementation plans, Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 5, 2023.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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